IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

APPEAL FROM ORDER NO. 272 OF 2007

Joseph Agostinho D'souza & ors.... Petitioner

versus

Addl.Collector & Competent
Authority, ULC and ors..... Respondent.

Shri Rajesh S. Datar for the petitioner
Mr. Y.M. Nakhwa AGP for Respondents 1 and 2.
Shri H.Sheepad Murthy i/b Mr. Piyush Shah for
respondents 4 and 5.

CORAM; A.P. DESHPANDE, J.
DATED; 10TH APRIL, 2007

P.C.;

1. The present petitioner is the original plaintiff who has instituted a suit for seeking declaration and a prayer for permanent injunction as well is made therein. The declaration that the petitioner is seeking is that without obtaining a separate commencement certificate, construction has been carried out on plot no.73 by using commencment certificate granted for plot no.74. The case of the defendant is that there was amalgamation of both the plots and thereafter the respondent applied for joint development of plots and with appropriate sanction from the authorities, the construction is done.

2. The trial court while dealing with the motion claiming temporary injunction has observed that the petitioner has belatedly filed the said application and by the time the trial court was considering the motion, almost all the construction work was over and the flats therein were also transferred to the purchasers, and the prayer seeking temporary injunction to restrain the respondent from continuing with the construction activities was rendred infructuous. By recording a finding that the balace of convenience would not be in favour of the petitioner/plaintiff and after recording further finding that the ptitioner has failed in making out a primafacie good case, the interim relief was refused.

3. Perused the order passed by the court below. It does not call for any interference as it does not suffer from any illegality much less patent. It will not be out of place to state at this juncture that an identical suit was instituted prior in point of time by the petitioner and a similar application was filed and the injunction application was rejected by the court below and aggreived thereby an appeal against the order was filed in the High Court and the same was withdrawn. After the withdrawal of the appeal against order, the main suit was withdrawn and the present suit instituted afresh praying for the same relief.

In this fact situation, I am of the clear view that absolutely no case is made out for interferencee with the order passed by the trial court. Hence appeal against order stands rejected summarily.

4. In view of the rejection of the A.O. civil application is also dismnised.

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